

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**Phyllis A. Mitchell, both individually and on behalf
of a class of others similarly situated,**

Plaintiff,

-v-

8:06-CV-00254

**The County of Clinton; David Favro, both individually
and in his official capacity as Sheriff of the County of
Clinton; Jerry Maggy, both individually and as
Undersheriff of the County of Clinton; Michael Smith,
both individually and as Major in the Clinton County
Sheriff's Department,**

Defendants.

APPEARANCES:

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Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

In this class action, plaintiff moves (Dkt. No. 64) to allow Paul Bachmann to intervene as a representative plaintiff pursuant to Fed. R. Civ. P. 23(d) and 24(b), and for leave to file an amended complaint accordingly. On July 5, 2007, this Court issued a Memorandum-Decision and Order (Dkt. No. 58) certifying the following two subclasses of plaintiffs:

Class A

All persons who were placed into the custody of the Clinton County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Clinton County Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton, from February 28, 2003 until October 24, 2003. Specifically excluded from the class are defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

Class B

All persons who were placed into the custody of the Clinton County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Clinton County Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton, from October 24, 2003 through the date on which the Clinton County Sheriff's Department and/or the County of Clinton cease or ceased, or are enjoined from, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are

defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

The Court appointed Phyllis A. Mitchell representative plaintiff for the entire class until a representative for Class B could be appointed, whereupon Ms. Mitchell would become the representative plaintiff for Class A. The Court further directed plaintiff to move for intervention by a proposed representative for Class B. This motion followed.

The proposed amended complaint claims that on or about November 9, 2003, Paul Bachmann was arrested and placed in the Clinton County Jail, and that he was strip-searched pursuant to defendants' unlawful policy. The Court finds that the motion to allow Bachmann to intervene is not untimely; that Bachmann's claim shares common questions of law and fact with the existing action; that intervention will not unduly delay or prejudice the adjudication of the parties' rights; and that Bachmann is an adequate representative of Class B. In the exercise of its discretion in conducting a class action under Fed. R. Civ. P. 23(d), the Court grants Bachmann's motion to intervene pursuant to Fed. R. Civ. P. 24(b).

The Court rejects defendants' contention that Bachmann cannot properly be permitted to intervene because the statute of limitations has run on his claim. The filing of a class action tolls the statute of limitations as to all asserted members of the class, *see generally American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-54 (1974); thus, inasmuch as Bachmann's claim was viable when this action was commenced on February 28, 2006, it is not time-barred. The other objections raised by defendants lack merit.

It is therefore

ORDERED that plaintiff's motion (Dkt. No. 64) to allow Paul Bachmann to intervene as representative of Class B and for leave to serve an amended complaint is granted; and it is further

ORDERED that hereinafter the caption shall read:

**Phyllis A. Mitchell and Paul Bachmann, both
individually and on behalf of a class of others
similarly situated,**

Plaintiffs,

-v-

8:06-CV-254


**The County of Clinton, David Favro, both
individually and in his official capacity as Sheriff of the
County of Clinton, Jerry Maggy, both individually
and as Undersheriff of the County of Clinton, and
Michael Smith, both individually and as Major in
the Clinton County Sheriff's Department,**

Defendants.

and the Clerk is directed to modify the docket report accordingly.

IT IS SO ORDERED.

January 7, 2008
Syracuse, New York



Norman A. Mordue
Chief United States District Court Judge